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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,146	01/15/2004	Donald Royce Patterson		8143
7590 Donald Royce Patterson 750 DeerTrail Drive San Marcos, TX 78666		01/30/2008	EXAMINER WILSON, GREGORY A	
			ART UNIT 3749	PAPER NUMBER
			MAIL DATE 01/30/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/764,146	PATTERSON, DONALD ROYCE
	Examiner Gregory A. Wilson	Art Unit 3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 28 September 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-6 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Objections***

Claim 3 is objected to because of the following informalities:

In line 3, change "extract" to --exhaust--.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 16, the limitation "interchangeable multi-sized templates on both...." is vague since both does not indicate any structure to describe where the templates are to be mounted.

Claim 1 recites the limitation "the source of hot exhaust gases" in line 13. There is insufficient antecedent basis for this limitation in the claim.

Claim 5 provides for the use of a Template, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant

is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 5 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1 & 6** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hirayama (6,257,880)** in view of **Harvey et al (1,407,412)**. Hirayama discloses an apparatus (10) for heating a plastic pipe and includes a container having an inner housing (64) having at least one first opening and a second opening for receiving a pipe to be heated, an outer housing (18) having at least one first opening and a second opening for receiving pipe to be heated, a layer of insulation (66) between the two housings inherently creating an oven effect during use, a conduit (76) having a first end communicating with the second opening in the container and attached to a source of hot gases (82). Hirayama however does not particularly disclose an interchangeable multi-

sized template on the sides of the container. Harvey et al teaches a device for heating elongate articles (pipes) including doors (10) as the end openings with interchangeable slots (11) of various sizes to accommodate the pipes for heating while still allowing ventilation and circulation of gases (SEE lines 87-108). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have modified the apparatus of Hirayama to include end templates (doors 10 with slots 11) as taught by Harvey et al for the purpose of supporting the pipes to be heated while maximizing heat retention.

**Claims 2-4** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hirayama (6,257,880) in view of Harvey et al (1,407,412) and further in view of Temple (4,437,453)**. Hirayama in view of Harvey et al disclose the applicant's primary inventive concept as stated above but with regard to claim 2, does not specifically teach a diffuser that disperses the hot exhaust gases. Temple teaches a permanently attached diffuser (24) which extends the length of the heating apparatus and receives hot exhaust gases from an automobile by way of conduit (20) (SEE Figures 1 & 3) and disperses the hot gases uniformly through perforations (18) in order to evenly heat scheduled pipe creating a uniform bend in the pipe. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains to have modified pipe heater of Hirayama in view of Harvey et al by including a diffuser as taught by Temple for the purpose of evenly distributing hot

exhaust gas from an automobile for uniformly heating a pipe to the point of creating a uniform bend.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

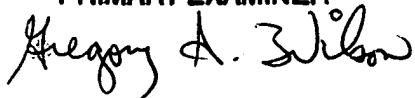
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory A. Wilson whose telephone number is (571)272-4882. The examiner can normally be reached on 7 am - 4:30 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**GREGORY WILSON  
PRIMARY EXAMINER**



Gaw  
January 25, 2008